

CCRB INVESTIGATIVE RECOMMENDATION

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|---|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Jacqueline Levy(F) | Team: Team # 6 | CCRB Case #: 201113426 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 10/13/2011 2:00 PM | Location of Incident: § 87(2)(b) | Precinct: 101 | 18 Mo. SOL 4/13/2013 | EO SOL 4/13/2013 | |
| Date/Time CV Reported Fri, 10/14/2011 12:07 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 10/14/2011 12:07 PM | | |

| Complainant/Victim | Type | Home Address |
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| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. POM Duane Atkinson | 12891 | 929662 | 101 PCT |
| 2. POM Carlos Segovia | 26422 | 937513 | 101 PCT |
| 3. POM Joseph Muller | 02825 | 940492 | 101 PCT |
| 4. POM Daniel Sjoberg | 13350 | 942557 | 101 PCT |
| 5. SGT Michael Billotto | 00819 | 903074 | 101 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.POM Daniel Sjoberg | Abuse: PO Daniel Sjoberg questioned § 87(2)(b) | |
| B.POM Daniel Sjoberg | Abuse: PO Daniel Sjoberg frisked § 87(2)(b) | |
| C.POM Joseph Muller | Abuse: PO Joseph Muller frisked § 87(2)(b) | |
| D.POM Duane Atkinson | Abuse: PO Duane Atkinson frisked § 87(2)(b) and § 87(2)(b) | |
| E.POM Daniel Sjoberg | Abuse: PO Daniel Sjoberg searched § 87(2)(b) | |
| F.POM Joseph Muller | Abuse: PO Joseph Muller searched § 87(2)(b) | |
| G.POM Duane Atkinson | Abuse: PO Duane Atkinson searched § 87(2)(b) and § 87(2)(b) | |
| H.POM Daniel Sjoberg | Abuse: PO Daniel Sjoberg searched the car in which § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b) were occupants. | |
| I.POM Carlos Segovia | Abuse: PO Carlos Segovia searched the car in which § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b) were occupants. | |
| § 87(4-b), § 87(2)(g) | | |
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Case Summary

On October 14, 2011, § 87(2)(b) filed this complaint with the CCRB by telephone (encl. 5A-C). On October 13, 2011, at 2:00 p.m., PO Duane Atkinson, PO Daniel Sjoberg, PO Carlos Segovia, and PO Joseph Muller of the 101st Precinct pulled over the vehicle in which § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants in front of § 87(2)(b) in Queens. The following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Daniel Sjoberg questioned § 87(2)(b) § 87(2)(g)
- **Allegation B – Abuse of Authority:** PO Daniel Sjoberg frisked § 87(2)(b)
- **Allegation C – Abuse of Authority:** PO Joseph Muller frisked § 87(2)(b)
- **Allegation D – Abuse of Authority:** PO Duane Atkinson frisked § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation E – Abuse of Authority:** PO Daniel Sjoberg searched § 87(2)(b)
- **Allegation F – Abuse of Authority:** PO Joseph Muller searched § 87(2)(b)
- **Allegation G – Abuse of Authority:** PO Duane Atkinson searched § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation H – Abuse of Authority:** PO Daniel Sjoberg searched the car in which § 87(2)(b) § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.
- **Allegation I – Abuse of Authority:** PO Carlos Segovia searched the car in which § 87(2)(b) § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants. § 87(2)(g)
- § 87(4-b), § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) at the time of the incident, is a black male who stands 5'10" tall, weighs 216 pounds, and has black hair and brown eyes. § 87(2)(b) the time of the interview. He will be referred to as § 87(2)(b)

CCRB Testimony

On October 18, 2011, § 87(2)(b) provided a telephone statement (encl. 6A). On November 9, 2011, § 87(2)(b) was interviewed at § 87(2)(b) § 87(2)(b) in Queens (encl. 6B-F). On September 13, 2012, § 87(2)(b) provided additional information by telephone (encl. 6G).

On October 13, 2011, at 2:00 p.m., § 87(2)(b) § 87(2)(b)'s son, was driving § 87(2)(b)'s four-door sedan back to § 87(2)(b)'s residence at § 87(2)(b) § 87(2)(b) in Queens, after picking up the vehicle from the mechanic. § 87(2)(b) was the front passenger, his other son § 87(2)(b) was the rear passenger on the passenger's side, and their friend § 87(2)(b) was the rear passenger behind the driver. There was a large bag of fast food in the car near § 87(2)(b) that was the only brown paper bag in the car. En route, they stopped at § 87(2)(b), § 87(2)(b)'s sister's residence; the fast food had been purchased prior to this stop. They were double parked across the street from the building near a fire hydrant. § 87(2)(b) got out of the vehicle to hand a Metrocard to § 87(2)(b)'s nephew, § 87(2)(b), who was in the courtyard of § 87(2)(b) § 87(2)(b) and § 87(2)(b) talked briefly. § 87(2)(b) never approached the vehicle. § 87(2)(b) subsequently stated in a telephone statement that the Metrocard had been returned to another unknown family member, not § 87(2)(b). They were there for three minutes.

As they approached § 87(2)(b) § 87(2)(b) they were stopped by officers in an unmarked vehicle identified through investigation as PO Daniel Sjoberg, PO Duane Atkinson, PO Carlos Segovia, and PO Joseph Muller of the 101st Precinct. PO Sjoberg, described as the tallest of the officers, was the driver. PO Segovia, described as the shortest of the officers, was the front passenger. PO Muller, described as an Italian male who stood 5'10" tall with a medium build, was the rear passenger behind the driver. PO Atkinson, the only black male officer who was known to § 87(2)(b) from prior interactions as "Captain Atkins," was on the rear passenger side.

PO Sjoberg approached § 87(2)(b) PO Atkinson and PO Segovia were on the passenger's side and PO Muller was behind PO Sjoberg. § 87(2)(b) stated that he may have looked back at the officers while the officers were approaching the vehicle. PO Sjoberg told § 87(2)(b) to open his mouth. § 87(2)(b) objected to this request and asked why they were being stopped. PO Sjoberg said that they had been driving fast. § 87(2)(b) produced his driver's license and registration at PO Sjoberg's request.

§ 87(2)(b) got out of the vehicle at PO Sjoberg's direction. PO Sjoberg searched the lining of § 87(2)(b)'s underwear, his socks, and in his genital area by putting his hands over and then underneath § 87(2)(b)'s clothing. § 87(2)(b) was wearing shorts, a shirt, and a jacket. PO Muller told § 87(2)(b) to get out of the vehicle. PO Muller frisked and searched § 87(2)(b) in the same manner. § 87(2)(b) could see the searches from his seat. He asked why they were being searched and started to get out of the car. PO Segovia told § 87(2)(b) to stay in the car. § 87(2)(b) picked up his cell phone and said that he was going to call his lawyer. PO Atkinson told him to put down the phone and § 87(2)(b) complied. § 87(2)(b) and § 87(2)(b) got out of the car at the officers' direction. In his subsequent telephone statement, § 87(2)(b) stated that he took the brown paper bag out of the car with him, though the officers had told him to leave it in the car. § 87(2)(b) did not remember whether any officer ever looked in the bag. § 87(2)(b) walked toward the rear of the vehicle near where § 87(2)(b) was standing. § 87(2)(b) was wearing jeans, a shirt, and a jacket. PO Segovia patted § 87(2)(b)'s pockets and then reached into the pockets while § 87(2)(b) was still at the side of the vehicle. PO Atkinson squeezed the pockets of § 87(2)(b)'s jacket and sweatpants and reached into the inside and outside pockets of his jacket. PO Atkinson searched the lining of his underwear and his buttocks and genital

areas and the lining of his sweatpants by putting his hands inside § 87(2)(b)'s sweatpants. § 87(2)(b) told the officers that if they wanted to search them to take them to the stationhouse. PO Atkinson said that if he kept talking, it would take longer.

PO Sjoberg entered the driver's side of the car and PO Segovia entered the passenger's side. The doors were open from when everyone got out of the vehicle. § 87(2)(b) asked the officers if they were allowed to search without a warrant and they told him to call a lawyer afterward and ask. PO Sjoberg and PO Segovia searched through the car by kneeling in the car, opening and closing the compartments, looking under the seats, and moving the seats. PO Segovia opened the glove compartment. They did not open the trunk. Nothing was recovered from them or the car. After the car was searched, PO Atkinson said, "Now you can call your lawyer," and the officers drove off. No one was arrested and no summonses were issued.

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *at the time of the incident, is a black male.* § 87(2)(b) § 87(2)(b), *where he resided at the time of the incident. He will be referred to as* § 87(2)(b)

CCRB Testimony

On November 17, 2011, § 87(2)(b) provided a telephone statement (encl. 9A). On December 16, 2011, § 87(2)(b) prepared a notarized statement (encl. 9B-E). § 87(2)(b), § 87(2)(g) § 87(2)(b) PO Sjoberg frisked and searched § 87(2)(b) PO Atkinson frisked and searched § 87(2)(b) He did not see if § 87(2)(b) or § 87(2)(b) were frisked or searched. PO Segovia and PO Muller searched the vehicle. § 87(2)(b) told the officers that they could not search the vehicle without a warrant.

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *at the time of the incident, is a black male.* § 87(2)(b) § 87(2)(b), *where he resided at the time of the incident. He will be referred to as* § 87(2)(b)

CCRB Testimony

On November 17, 2011, § 87(2)(b) provided a telephone statement (encl. 8A). On December 13, 2011, § 87(2)(b) prepared a notarized statement (encl. 8B-§ 87(2)(g) § 87(2)(b) § 87(2)(b) stated that PO Atkinson frisked and searched him and § 87(2)(b) PO Segovia and PO Muller searched the vehicle under all of the seats and in all of the door compartments.

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *at the time of the incident, is a black male.* § 87(2)(b) § 87(2)(b) *where he resided at the time of the incident.*

CCRB Testimony

On November 21, 2011, § 87(2)(b) provided a telephone statement (encl. 7A). On December 13, 2011, § 87(2)(b) prepared a notarized statement (encl. 7B-D). § 87(2)(b), § 87(2)(g) § 87(2)(b) He stated that both PO Segovia and PO Atkinson frisked and searched § 87(2)(b) PO Atkinson frisked and searched § 87(2)(b) PO Muller frisked and searched § 87(2)(b) PO Sjoberg told § 87(2)(b) "Open your fucking mouth." The officers told them that they had

followed them from § 87(2)(b). The officers searched the glove compartment and the seats. § 87(2)(b) told them that they could not search the car without a warrant. § 87(2)(b) could see what the officers were doing because he kept turning around. Officers told him not to turn around. In his telephone statement, he stated that both PO Muller and PO Sjoberg searched the vehicle, but in his notarized statement, he stated that only PO Sjoberg searched the vehicle.

NYPD Statements

Subject Officer: SGT MICHAEL BILLOTTO

- *Sgt. Billotto, § 87(2)(b) old at the time of the incident, is a white male who stands 6' tall, weighs 300 pounds, and has gray hair and blue eyes.*
- *On October 13, 2011, Sgt. Billotto worked from 11:48 a.m. to 8:45 p.m. He was the SNEU team supervisor and his team was in the field while he was alone on an observation post. He was in uniform and not assigned to a vehicle.*

Memo Book (encl. 10A-C)

On his fly sheet, Sgt. Billotto noted that at 2:00 p.m., he was observing § 87(2)(b) and did a call out to RMP § 87(2)(e), § 87(2)(b) to stop a vehicle in which a possible drug dealer had passed a bag to the driver. The stop was negative for drugs; there was food in the bag. The occupants refused to provide pedigree for the UF 250s.

CCRB Testimony (encl. 11A-D)

On January 26, 2012, Sgt. Billotto was interviewed at the CCRB. On October 13, 2011, at 2:00 p.m., Sgt. Billotto was on the roof of the 101st Precinct stationhouse in Queens observing § 87(2)(b) with binoculars. The SNEU team had previously made arrests for the sale of marijuana at § 87(2)(b). He observed a vehicle drive up to § 87(2)(b) and double park across the street. A few minutes later, someone in the vehicle waved over someone from § 87(2)(b). The individual approached the driver, identified through investigation as § 87(2)(b) and they spoke for a few minutes. The individual leaned into the vehicle almost up to his waist. There may have been an exchange but Sgt. Billotto could not tell. The individual returned to § 87(2)(b) and brought back a brown paper bag, which he placed in the driver's window. The individual and § 87(2)(b) spoke for a few minutes before the vehicle drove off. Sgt. Billotto believed that this was a drug transaction because his team had made an arrest at that location for a marijuana sale the day prior, though the arrested individuals were not a part of this incident. In that instance, a vehicle pulled up and an individual approached in the same manner, and a brown paper bag was exchanged. Also, based on his experience as an officer in the street narcotics enforcement unit, the amount of time the vehicle spent at the location, the location itself, and the exchange between the individual and § 87(2)(b) was indicative of a drug transaction.

During what Sgt. Billotto considered to be a possible drug transaction, he radioed the SNEU team, which consisted of PO Sjoberg, PO Atkinson, PO Segovia, and PO Muller, a description of the vehicle. At the time of the interview, Sgt. Billotto did not recall what description was provided but stated that he usually provides the color, make, and model of the vehicle and sometimes the state of the license plate. When the suspected transaction was completed, Sgt. Billotto radioed the team again to tell them to stop the vehicle. He observed the vehicle make a left but then lost sight of the vehicle. No other vehicles made the turn before he observed the SNEU team vehicle make the turn. The team informed him that they had the vehicle stopped.

The next he heard on the radio was that the brown paper bag had contained food and the stop was negative for a drug transaction. Sgt. Billotto stated that PO Sjoberg probably was the officer who prepared the UF 250s. He did not instruct PO Sjoberg to do so. If the reports had been prepared, he would have reviewed them; at the time of the interview, he did not recall whether or not he had done so.

Subject Officer: PO DANIEL SJOBERG

- *PO Sjoberg, § 87(2)(b) old at the time of the incident, is a white male who stands 6'2" tall, weighs 250 pounds, has brown hair and hazel eyes.*
- *On October 13, 2011, PO Sjoberg worked from 12:00 p.m. to 8:35 p.m. He was assigned to SNEU with PO Duane Atkinson, PO Carlos Segovia, and PO Joseph Muller. They were in plainclothes and an unmarked blue Crown Victoria, vehicle number § 87(2)(b).*

Memo Book (encl. 12A-B)

In his memo book, PO Sjoberg noted that at 2:00 p.m. he stopped a vehicle containing four males in front of § 87(2)(b) for trespassing based on an observation by Sgt. Billotto. During the interview he stated that they were not stopped for trespassing and he had just recorded the information incorrectly. UF 250s were prepared and the individuals refused to provide ID.

CCRB Testimony (encl. 13A-C)

On January 19, 2012, PO Sjoberg was interviewed at the CCRB § 87(2)(g)

A day prior to the incident, the SNEU team had observed a vehicle drive up to § 87(2)(b) and double park. A male walked from § 87(2)(b) to the vehicle, took money from the passengers, went inside, and returned with a brown paper bag that the officers later learned contained marijuana. PO Sjoberg made an arrest in regards to that incident.

On October 13, 2011, Sgt. Billotto was on the roof of the 101st Precinct stationhouse and observed a vehicle double park outside of § 87(2)(b). Sgt. Billotto radioed that the same interaction from the day before had happened again and gave a description of the car. Sgt. Billotto mentioned a brown bag. They followed the vehicle and stopped it outside of § 87(2)(b). PO Sjoberg approached the driver, § 87(2)(b). PO Atkinson approached the front passenger, § 87(2)(b) and PO Muller and PO Segovia approached the rear passengers, § 87(2)(b) and § 87(2)(b). PO Sjoberg asked § 87(2)(b) for his driver's license and paperwork for the vehicle and informed him that they were being stopped because of a possible drug transaction and because he had been double parked. He did not recall if he said anything about speeding. PO Sjoberg did not ask him to open his mouth and did not say, "Open your fucking mouth." § 87(2)(b) did not immediately provide his license. PO Sjoberg did not think § 87(2)(b) had documentation for the vehicle and did not remember whether § 87(2)(b) ever provided his license.

PO Sjoberg described the occupants of the vehicle as fidgety and stated that none of them would sit still, at which point, he began to fear for his safety. § 87(2)(b) and § 87(2)(b) were particularly fidgety and were moving their hands near the waistband of their jackets. Either § 87(2)(b) or § 87(2)(b) PO Sjoberg did not recall which, reached under the seat. None of the occupants ever threatened an officer. PO Sjoberg told § 87(2)(b) to get out of the vehicle and the officers all asked the occupants to get out of the car after a few minutes.

PO Sjoberg observed a brown paper bag in the back seat. He did not remember if it was on the seat or the floor. PO Sjoberg asked § 87(2)(b) if he could look at the brown paper bag that his sergeant would be able to identify. § 87(2)(b) said that PO Sjoberg could look and that the bag was in the back seat. At no point did § 87(2)(b) tell PO Sjoberg to get out of the vehicle or object to him being in the vehicle. PO Sjoberg did not speak to any of the other passengers. PO Sjoberg entered the vehicle through the rear driver's side door and was inside for 15 to 20 seconds. PO Sjoberg observed that the bag contained fast food. He did not remember if he looked inside the bag while he was still in the vehicle. He thought that he did remove the bag from the vehicle and then placed it back in the vehicle. PO Sjoberg did not search the rest of the vehicle.

PO Sjoberg stated that he believed PO Muller, PO Segovia, and PO Atkinson frisked the four

occupants. PO Sjoberg did not frisk anyone. PO Sjoberg's view of the other officers was obscured during the time of the frisks because he was in front of the vehicle checking the registration and inspection stickers and then inside the vehicle looking at the bag. He did see the four occupants with their hands on the trunk. He could not see if they were searched. PO Sjoberg subsequently stated that he did not see whether they were frisked. PO Sjoberg did not use any profanities during the incident and did not hear any other officer do so.

Sgt. Billotto did not respond to the location. PO Sjoberg did not know if Sgt. Billotto could see the officers where they stopped the vehicle. He did not remember if Sgt. Billotto ever confirmed to the officers that they had stopped the correct vehicle. PO Sjoberg ultimately obtained identification from one of the individuals, though he did not recall which one. No summons was issued.

PO Sjoberg prepared stop and frisk reports and was aware that they have not been located. He was unable to provide an explanation as to why.

Subject Officer: PO DUANE ATKINSON

- PO Atkinson, § 87(2)(b) old at the time of the incident, is a black male who stands 5'11" tall, weighs 265 pounds, has black hair though he was bald at the time, and has brown eyes.
- On October 13, 2011, PO Atkinson worked from 12:00 p.m. to 8:35 p.m. He was assigned to SNEU with PO Daniel Sjoberg, PO Joseph Muller, and PO Carlos Segovia. He was in plainclothes and a blue Crown Victoria.

Memo Book (encl. 14A-B)

In his memo book, PO Atkinson noted that at 3:00 p.m., he conducted a car stop at § 87(2)(b) Avenue. Four UF 250s for criminal possession of a weapon were prepared without names because the individuals who were stopped were uncooperative.

CCRB Testimony (encl. 15A-C)

On January 20, 2012, PO Atkinson was interviewed at the CCRB. PO Atkinson did not recall if Sgt. Billotto described the bag or the occupants of the vehicle. Sgt. Billotto provided a description of the vehicle so that the team could stop the vehicle. PO Atkinson did not recall if Sgt. Billotto observed money exchanged.

PO Sjoberg was the driver, PO Segovia was front passenger, PO Muller was the rear driver's side passenger, and PO Atkinson was the rear passenger's side passenger of their vehicle. PO Atkinson approached the rear passenger's side door. PO Atkinson initially stated that when the officers first approached the civilians' car, all of the passengers were moving around. When asked specifically what the passengers were doing, PO Atkinson stated that he could not see § 87(2)(b) and he saw § 87(2)(b) reach under a seat, but did not specify the actions of the other passengers. He and PO Segovia approached the passenger's side and PO Sjoberg and PO Muller approached the driver's side. § 87(2)(b) said, "There goes Captain Atkins," referring to PO Atkinson. PO Atkinson believed that he had arrested § 87(2)(b) in the past. PO Atkinson could not hear what PO Sjoberg said to § 87(2)(b) and could not see § 87(2)(b). He focused on § 87(2)(b) but did not speak to him; he was observing § 87(2)(b) to make sure he did not make any furtive movements.

PO Sjoberg had § 87(2)(b) get out of the vehicle a minute or two after the officers approached the vehicle; PO Atkinson did not know why. PO Segovia had § 87(2)(b) get out of the vehicle and walk to the back and PO Atkinson frisked him. While PO Atkinson did not know why PO Segovia had § 87(2)(b) exit the vehicle, he presumed that it was to make sure that the passengers did not have any weapons because the passengers had been moving around when the officers first approached. PO Segovia then had § 87(2)(b) exit the car and PO Atkinson frisked him. Both frisks PO Atkinson conducted were to make sure that § 87(2)(b) and § 87(2)(b) did not have weapons and consisted of patting down the chest, waist, and legs. He believed that they might

have weapons because of the movements he observed in the vehicle upon stopping the vehicle. He also feared for his safety because there were four civilians on the back of the car and only two officers because PO Sjoberg and PO Segovia remained at the front of the vehicle to search it. There were no other reasons for the frisks. § 87(2)(b) and § 87(2)(b) were frisked but PO Atkinson did not remember which officer frisked them. § 87(2)(b) and § 87(2)(b) were not searched, but he could not say whether or not § 87(2)(b) and § 87(2)(b) were searched. PO Atkinson did not observe anything that made him believe that § 87(2)(b) or § 87(2)(b) was in possession of a weapon.

After being frisked, the occupants kept moving away from the rear of the vehicle despite instructions not to do so. § 87(2)(b) approached PO Segovia, who was searching the vehicle. PO Atkinson pulled § 87(2)(b) back by his arm. PO Atkinson asked § 87(2)(b) and § 87(2)(b) for identification and both stated that they did not have any.

PO Sjoberg and PO Segovia searched the vehicle. PO Segovia entered the front passenger's door and PO Sjoberg went in the driver's seat. PO Atkinson did not recall whether either went into the back seat. PO Atkinson could not see whether the glove compartment was opened. PO Atkinson did not know what PO Sjoberg and PO Segovia found but nothing illegal was recovered.

To his knowledge, PO Sjoberg did not tell § 87(2)(b) to open his mouth or say, "Open your fucking mouth." PO Atkinson stated that he did not know why the vehicle was searched. He subsequently stated that the search was based on the observations of Sgt. Billotto and a belief that there might be weapons in the vehicle based on the movements of the occupants. PO Sjoberg told PO Atkinson that he prepared the UF 250s.

Subject Officer: PO JOSEPH MULLER

- *PO Muller, § 87(2)(b) old at the time of the incident, is a white male who stands 5'10" tall, weighs 190 pounds, and has brown hair and hazel eyes.*
- *On October 13, 2011, PO Muller worked from 12:00 p.m. to 8:35 p.m. He was assigned to SNEU with PO Daniel Sjoberg, PO Carlos Segovia, and PO Duane Atkinson. He was in plainclothes and in a light blue Crown Victoria.*

Memo Book (encl. 16A-C)

On his fly sheet, PO Muller noted that at 2:00 p.m., UF 250s were prepared regarding a stop at § 87(2)(b) by PO Sjoberg.

CCRB Testimony (encl. 17A-C)

On January 24, 2012, PO Muller was interviewed at the CCRB. § 87(2)(g)

§ 87(2)(b) Sgt. Billotto provided the type of car, the color of the car, and the direction it was headed. PO Muller did not remember if Sgt. Billotto said anything about having observed money being exchanged.

PO Muller did not hear what PO Sjoberg said to § 87(2)(b). The occupants were directed to get out of the vehicle and stand by the rear of the vehicle. PO Muller did not issue the direction and he did not know who did. He did not know why the occupants were ordered out of the vehicle. PO Muller did not observe the actions of anyone other than § 87(2)(b) who was moving around but did not reach under anything or make any movements that PO Muller classified as furtive.

The occupants went to the back of the vehicle where PO Muller watched § 87(2)(b) and § 87(2)(b) and PO Atkinson watched § 87(2)(b) and § 87(2)(b). PO Sjoberg frisked § 87(2)(b). PO Muller frisked § 87(2)(b) because he had been moving around and seemed agitated. § 87(2)(b) also tried to get back in the vehicle after he was ordered out, despite PO Muller's instructions to stay at the rear of the vehicle. PO Muller did not observe any bulges or feel anything during the frisk. He did not recall if any of the other occupants were frisked. § 87(2)(b) and § 87(2)(b) were not searched. He did not see whether § 87(2)(b) (b) or § 87(2)(b).

§ 87(2)(b) were searched.

PO Sjoberg and PO Segovia searched the vehicle for the brown bag that Sgt. Billotto had observed for less than a minute. PO Sjoberg and PO Segovia determined that the brown bag contained food. PO Muller did not observe where in the vehicle PO Sjoberg and PO Segovia searched. No officer used any profanities during the incident.

Witness Officer: PO CARLOS SEGOVIA

- *PO Segovia, § 87(2)(b) old at the time of the incident, is a Hispanic male who stands 5'7" tall, weighs 205 pounds, and has black hair and brown eyes.*
- *On October 13, 2011, PO Segovia worked from 12:00 to 8:35 p.m. He was assigned to the SNEU team. He was in plainclothes and a light blue unmarked sedan number § 87(2)(e), § 87(2)(f)*

Memo Book (encl. 18A-D)

On his fly sheet, PO Segovia noted that he conducted a car stop on the corner of § 87(2)(b) e. UF 250s were prepared.

CCRB Testimony (encl. 19A-B)

On January 25, 2012, PO Segovia was interviewed at the CCRB. § 87(2)(g)

§ 87(2)(b). PO Segovia observed all four of the occupants moving their shoulders around and saw one or two, he could not remember which, of the occupants look back at the officers as they approached. PO Segovia approached § 87(2)(b) and PO Sjoberg approached § 87(2)(b). PO Muller and PO Atkinson stood at the rear of the vehicle. PO Sjoberg requested § 87(2)(b)'s license and registration. The occupants of the vehicle were generally non-compliant with PO Sjoberg's instructions and were verbally uncooperative. He did not recall PO Sjoberg asking § 87(2)(b) to open his mouth. An officer, PO Segovia did not remember who, asked the occupants to get out of the vehicle. They all started to get out at the same time, but were instructed to get out one at a time and go to the back of vehicle.

When PO Segovia searched the vehicle, he observed multiple paper bags in the vehicle that appeared to contain fast food; the bags were open and he could see the food inside. PO Segovia did not touch any of the bags. PO Segovia looked under the passenger's side front seat and around the back seat in the immediate area where the occupants had been sitting for the paper bag Sgt. Billotto had observed. PO Segovia did not ask if he could enter the vehicle and did not recall any civilian objecting to him being in the vehicle. § 87(2)(b) approached him from the rear of the vehicle. PO Segovia asked him to step back. PO Segovia did not find a bag containing drugs. PO Segovia did not know what happened at the rear of the vehicle while he was searching and did not see whether the passengers were frisked or searched. He did not recall whether PO Sjoberg ever obtained the documentation for the vehicle.

NYPD Documents

Arrest Report Numbers § 87(2)(b) and § 87(2)(b) (encl. 21A-B)

These arrest reports indicate that § 87(2)(b) were arrested in front of § 87(2)(b) on October 12, 2011 at 3:45 p.m. by PO Sjoberg. Marijuana was recovered and vouchered.

101st Precinct Stop and Frisk Report Log (encl. 20A-G)

No UF 250s were prepared for § 87(2)(b), § 87(2)(b), § 87(2)(b) or § 87(2)(b) or for any incident in the vicinity of § 87(2)(b).

Status of Civil Proceedings

§ 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) each filed a Notice of Claim with the City of New York on § 87(2)(b), claiming physical injury, mental distress, pain and suffering, damage to character and reputation arising from being falsely seized, detained, searched, assaulted, battered, defamed, and violations of the New York State and United States Constitutions and seeking \$1 million each as redress (encl. 22A-P). A 50H hearing had not been held as of September 12, 2012. § 87(2)(g)

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) (encl. 3A-D).

Subject Officers CCRB History

- PO Sjoberg has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2A).
- PO Atkinson has been a member of the service for 10 years and there is one substantiated CCRB allegations against him (encl. 2B-D).
 - In case number 200703932, a frisk allegation was substantiated. The CCRB recommended command discipline; no disciplinary action was taken by the NYPD.
- PO Muller has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2E).
- PO Segovia has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 2F).
- Sgt. Billotto has been a member of the service for 19 years and there are no substantiated CCRB allegations against him (encl. 2G).

Conclusion

Identification of Subject Officers

§ 87(2)(g), § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g), § 87(2)(b)

Investigation Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(b) alleged that PO Sjoberg said to § 87(2)(b) “Open your fucking mouth.” However, § 87(2)(b) did not make this allegation against PO Sjoberg and no other civilian made any discourtesy allegations. § 87(2)(g)

It is undisputed that the civilians were double parked outside of § 87(2)(b). A passenger vehicle may stand alongside a fire hydrant between sunrise and sunset so long as the driver remains behind the wheel (encl. 1A-F). § 87(2)(b) specified that they were double parked at a fire hydrant and that the driver, § 87(2)(b) got out of the vehicle; § 87(2)(g)

Allegation A – Abuse of Authority: PO Daniel Sjoberg questioned § 87(2)(b)

Allegation E – Abuse of Authority: PO Daniel Sjoberg searched § 87(2)(b)

Allegation F – Abuse of Authority: PO Joseph Muller searched § 87(2)(b)

Allegation G – Abuse of Authority: PO Duane Atkinson searched § 87(2)(b) and

§ 87(2)(b)

§ 87(2)(b) and § 87(2)(b) each alleged that the same officer who frisked them also searched them and that PO Sjoberg told § 87(2)(b) to open his mouth. PO Sjoberg, PO Muller, PO Atkinson, and PO Segovia denied that any of the individuals were searched or that PO Sjoberg told § 87(2)(b) to open his mouth. Sgt. Billotto was not present and stated that he was not informed as to whether any of the civilians were searched. § 87(2)(g)

Allegation B – Abuse of Authority: PO Daniel Sjoberg frisked § 87(2)(b)

Allegation C – Abuse of Authority: PO Joseph Muller frisked § 87(2)(b)

Allegation D – Abuse of Authority: PO Duane Atkinson frisked § 87(2)(b) and

§ 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were frisked. § 87(2)(b) admitted to attempting to get out of the vehicle without being told to do so by the officers. He also stated that he may have looked back while the officers approached the vehicle. No other civilian made any statements regarding moving around in the vehicle when the officers approached.

PO Sjoberg stated that he observed § 87(2)(b) and § 87(2)(b) “fidgeting” in the back seat and putting their hands near their waistbands while the officers were at the vehicle and that one of the two reached under the back seat, though he denied frisking any of the occupants. He stated that all of the occupants were fidgeting in a manner that eventually caused him to fear for his safety. PO Atkinson stated that all of the occupants were moving around and that § 87(2)(b) reached under the seat. He stated that he feared that both § 87(2)(b) and § 87(2)(b) were armed but that he could not see whether § 87(2)(b) made any suspicious movements. PO Atkinson also stated that he

did not observe anything that made him believe that § 87(2)(b) or § 87(2)(b) were armed. PO Muller stated that he only watched § 87(2)(b) and noted that § 87(2)(b) was moving around but did not reach anywhere in the vehicle or make any movements he considered “furtive.” PO Segovia stated that all four occupants looked back at the officers, then they moved their shoulders around, and then one or two of the occupants looked back at the officers again; he did not note any movements made by the occupants once the officers approached, though he described them as verbally uncooperative.

Reasonable suspicion that an individual is a danger to an officer or civilian by virtue of being armed is required for an officer to justify frisking the individual. N.Y.S. Criminal Procedure Law, Section 140.50 (3) (encl. 1L). In a vehicle stop, nervousness and otherwise innocuous shoulder movements made by individuals while inside the vehicle do not provide reasonable suspicion for a frisk of the occupants. People v. Tariff, 19 Misc.3d 1117A (Sup. Ct. New York Cty. 2008) (encl. 1G-K). Responding to a call involving narcotics does not give rise to reasonable suspicion that an individual is armed sufficient for a frisk. People v. Gonzalez, 743 N.Y.S.2d 112, 113 (2002 -1st Dept.) (encl. 1T-U).

§ 87(2)(b), § 87(2)(g)

PO Sjöberg denied frisking anyone despite claiming to fear for his safety. PO Muller stated that he frisked § 87(2)(b) after observing no movements he believed to be furtive. § 87(2)(b), § 87(2)(g)

Allegation H – Abuse of Authority: PO Daniel Sjöberg searched the car in which § 87(2)(b)

§ 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

Allegation I – Abuse of Authority: PO Carlos Segovia searched the car in which § 87(2)(b)

§ 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Sjöberg and PO Segovia searched § 87(2)(b)'s vehicle. Both PO Sjöberg and PO Segovia admitted that they were searching the vehicle for evidence of a drug transaction. § 87(2)(b), § 87(2)(g)

PO Segovia stated that he searched the rest of the vehicle after observing that the first brown paper bag he found did not contain drugs. PO Sjöberg and PO Segovia stated that their search was based on observations made by Sgt. Billotto, who stated that he observed an individual from § 87(2)(b) give § 87(2)(b) a brown paper bag.

An officer may search a vehicle if there is a reasonable belief that evidence of the crime for which an individual has been arrested for may be found in the vehicle. People v. Newman, 2012 NY Slip Op 2816, 5 (App. Div. 1st Dept. 2012) (encl. 1O-S). Absent an arrest, an officer may only search a vehicle for weapons if he reasonably believes that there is a substantial likelihood that a weapon is present, which presents an “actual and specific” risk to their safety based on the totality of the circumstances. Id. An exchange for “something” from a brown paper bag in exchange for money is not a “tell-tale” sign of a drug transaction. People v. Washington F., 167 A.D.2d 554 (App.Div. 2nd Dept. 1990) (encl. 1Y).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: 6

Investigator: _____ Jacqueline Levy _____
Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature

Print

Date